PROPOSAL FOR EVALUATION OF
THE PROVINCIAL TRIAL COORDINATION PROGRAM

Submitted by:

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TRIAL COORDINATION EVALUATION PROPOSAL

I. DESCRIPTION OF THE TRIAL COORDINATION PROGRAM

The Trial Coordination Program was instituted on January 1, 1985 in Provincial Judges Court for the stated purpose of improving upon existing methods of case management. Since that time, the program has been in operation in four of the eleven courtrooms of the Provincial Judges Court at 373 Broadway Avenue. In this section, a description of the program and its objectives will be presented.

The Manitoba Provincial Judges Court faces two inter-related problems which are common in court systems in other jurisdictions. The first is an inefficient use of court time: while courtrooms ideally could be hearing cases five or six hours per day, sittings lasting a fraction of that time are the norm. The second problem is a backlog of cases which creates delays in excess of several months for defendants awaiting determination of their charges. Consequently, courtrooms sit empty while the waiting period for trial dates grows. One possible solution to these problems is to overbook court time (i.e., schedule more cases than could actually be heard) in order to increase the number of hours sat, thereby increasing the number of cases processed and decreasing both the backlog and waiting period for trial dates. It is this solution which the Manitoba Trial Coordination Program attempts to implement.

The program is administered by a Trial Coordinator who is responsible for scheduling of cases referred to her by the Crown Attorneys in charge of docket courts at the Public Safety Building. The cases referred comprise those criminal and provincial matters in which the defendant has entered a plea of 'not guilty' and the Crown estimates the time required for trial at

one day or less[1]. Defence counsel whose cases are referred to the Trial Coordinator have two weeks from the date on which a plea was entered in docket court[2] to contact her to arrange a trial date. Failure to do so results in the issuing of a warrant for the defendant's arrest.

In scheduling trial dates, the Trial Coordinator takes into account the availability not only of defence counsel and courtrooms but also police witnesses. Once an empty courtroom has been found on a date on which defence counsel is available, the Trial Coordinator consults the police shift calendar to determine whether the officers scheduled as witnesses (listed on the Report by Crown Counsel) are on duty on the date being considered. If they are, the trial is booked for that date; if not, another date is sought. When a trial date is determined, the Trial Coordinator prepares a Trial Notice which is signed by the defence counsel and distributed to the Provincial Judges Court General Office, to the Crown and to the defendant.

If a defendant whose trial has been set by the Trial Coordinator subsequently pleads 'guilty', the Trial Coordinator attempts to adjust the court schedule to make use of the time.

II. OBJECTIVES

As noted above, the primary goal of the Trial Coordination Program is to improve case management within the Provincial Court system. This primary goal has been broken down into five specific objectives, which will be discussed in turn.

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[1]This estimate (in half-hour units) is noted on the Report by Crown Counsel form, which is forwarded to the Trial Coordinator. Defence counsel are subsequently required to confirm the Crown's time estimate.

[2]the 'Final Appearance Date'

1) Ensure Optimum Use of Court Time

This objective is to be met through the formulation of trial schedules by the Coordinator which take into account the fact that many cases scheduled for trial do not go on[1]. In order to ensure a constant flow of cases through the four courtrooms involved in the program the Trial Coordinator was initially instructed to book six (6) hours of trials per day into each court to achieve a goal of three (3) hours of actual use. However, data provided by the Trial Coordinator indicates that the number of hours booked per day increased steadily throughout 1985 until November and December when more than ten hours per day was being booked into every courtroom. During the first six months of 1986, an average of slightly less than nine hours per court per day was being scheduled.

2) Reduce Hardship and Cost for Participants

The second objective concerns the key players in the court system: judges, Crown Attorneys, defence counsel, defendants and witnesses. At a basic level, this goal is achieved if court time is used to maximum efficiency in that judges and Crowns, who are paid salaries to process cases, will spend more time in court doing so. Increased court efficiency should reduce the waiting period for trial dates, which benefits defendants (who will be absolved or begin serving their sentences promptly), Crown and defence counsel (whose respective witnesses will not have disappeared or

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[1]The primary reason for failure to proceed is that the defendant changes his/her plea to 'guilty' or the Crown stays the charges. For example, statistics compiled by the Clerk of the Court Office at 373 Broadway indicate that in 1985, of 3002 trials set in the four Trial Coordination courtrooms, 654 proceeded, 999 had 'guilty' pleas entered on the trial date and the Crown stayed charges on the trial date in another 523 cases.

forgotten) and witnesses (who can testify while their recollections are still fresh).

In addition, the costs and inconvenience associated with setting a trial date should be reduced because scheduling by the Trial Coordinator eliminates the need for a court appearance to set a date. Finally, costs should be reduced by the fact that the Trial Coordinator has the status of magistrate and thus is empowered to deal with 'guilty' pleas in summary conviction matters with the consent of the Crown, thereby eliminating the need for another court appearance.

3) Ensure Timely Disposition of Cases

A prompt disposition is not only desirable, under the Canadian Charter of Rights and Freedoms, it is constitutionally guaranteed.[1] The stated goal of the Trial Coordination Program is to schedule all trials within three (3) months of first appearance. This goal is to be accomplished by overbooking court time to ensure a continuous flow of cases and also by rescheduling matters into court rooms where the case originally slated is not proceeding to trial.

4) Improve Commitment of Participants to Case Management

It is obvious that, for a system of case management to work well, the judges, Crown Attorneys and defence counsel involved must support it. The Trial Coordination Program is designed to accomplish this by providing a more efficient, convenient and cost-effective system for these participants.

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[1]Section 11.(b) states: "Any person charged with an offence has the right...to be tried within a reasonable time;".

5) Reduce Overtime Costs for the Winnipeg Police

Police witnesses figure prominently in virtually every criminal trial and if they are subpoenaed to appear when they are not on duty, they are entitled to be paid overtime.[1] The Trial Coordination Program is designed to reduce overtime costs by scheduling trials when police witnesses are on duty. The Trial Coordinator is provided with lists of the police witnesses required for each case (in the Report by Crown Counsel) and with a copy of the police annual shift calendar. When defence counsel comes in to obtain a trial date, she consults the calendar and schedules the trial for a date on which the police witnesses are working days.

III. DESIGN FOR EVALUATION

The purpose of this evaluation is to assess the degree to which the Trial Coordination Program has succeeded in meeting the objectives outlined in the preceding section. The two basic dimensions of the assessment are objective and subjective: how effective is the program; and how effective is it perceived to be by the people affected by it. The former evaluation will be based on quantitative data compiled by the Trial Coordinator and the Clerk of the Court at 373 Broadway. The latter will be based on interviews with judges, Crown Attorneys and defense counsel who have been involved with the program.

1) Quantitative Analysis

Before discussing the way in which the individual objectives will be evaluated, it is useful to describe the statistics which have been compiled

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[1]Officers who are called when off duty receive twelve (12) hours' pay regardless of how long their testimony takes or whether they testify at all. Officers called while on annual leave are entitled to twelve (12) hours pay plus a day off. Thus, the lowest-paid Constable called to testify while not on duty receives in excess of $200.00 in overtime wages.

on a monthly basis since January, 1985 by the Clerk of the Court and the Trial Coordinator. The following information is available for all courts (i.e., those involved in the Trial Coordination Program and those not involved):

1. Cases Scheduled
   a) trials
   b) guilty please
   c) other matters

2. Trials Occurring

3. Trials Cancelled
   a) by guilty pleas
      i) set prior to trial date
      ii) set on trial date
   b) by Crown stays

4. Cases Not Concluded
   a) remands
   b) no-shows
   c) other

5. Court Days Available (per court)

6. Court Days Cancelled (per court)

7. Total Hours Sat (per court)

8. Average Hours Sat (per court per day)

The following data is available for the four Trial Coordination courts only:

1. Number of Hours Scheduled
   a) 3 weeks before trial date
   b) remaining on trial date

2. Police Witnesses
   a) number subpoenaed
   b) number on duty on trial date

3. Time of Trial Cancellation
   a) by guilty plea, stay or rescheduling more than 3 weeks in advance of trial date

b) by guilty plea, stay or rescheduling 3 weeks or less in advance of trial date[1]

In addition, the Trial Coordinator keeps statistics on the number of guilty pleas and stays of which she disposes and the number of warrants which she issues for failures to appear to set trial dates.

It is proposed that the foregoing data be used to evaluate the success of the Trial Coordination Program in meeting its objectives as follows.

1) Court Utilization

Using the information available for all courts, the relative efficiency of the Trial Coordination courts will be assessed. Specific comparisons will include: the number of trials scheduled in the two types of courtrooms; the number of trials actually proceeding; the number of court days cancelled; and the number of hours the courts are in use. A comparison of the number of early and late cancellations (due to guilty pleas, stays and reschedulings) will also be made.

2) Minimization of Hardship and Costs

The data on court utilization is relevant to this objective since, in a general sense, courts which operate more efficiently (i.e., sit more hours and hear more cases) save the court system money and control the backlog of cases which is detrimental to all participants. More specifically, an indicator of the extent to which the Trial Coordination Program has reduced hardship and costs is provided by the number of cases which the Trial Coordinator schedules for trial, since this eliminates the

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[1]This time period reflects the date beyond which court time cannot be reassigned; i.e., if a trial is cancelled more than 3 weeks in advance, the Trial Coordinator can reschedule another matter into the time slot. Where cancellations occur in the 3 weeks before trial, the time slot cannot be reused.

need for a court appearance to do so and thereby saves the participants the cost and inconvenience of attending court.

Another indicator of savings is the cases in which 'guilty' pleas have been entered which are disposed of by the Trial Coordinator, since this also eliminates the cost and inconvenience of a court hearing.

3) Timely Disposition

This objective will be assessed by examining the length of time it takes to obtain a trial date in Trial Coordination and regular courts. The number of early and late cancellations is also relevant to this objective, in that the ability of the courts to deal with cases promptly is hindered by cases for which court time is booked and no trial occurs. However, in Trial Coordination courts, the booked time is only wasted in the case of late cancellations; where trials are cancelled more than 3 weeks in advance of the trial date, the Trial Coordinator rebooks the time. In the other courts, all trials cancelled result in wasted time.

4) Improvement of Attitudes

Whether participants' attitudes to case management have been improved by the Trial Coordination Program is a question which requires information provided by the participants themselves. However, several quantitative indicators of this objective are available. First, the ratio of trials set to trials which proceed in all courts suggests the extent to which the Crown and defence counsel attempt to avoid wasting court time (as does the ratio of hours originally scheduled in Trial Coordination courtrooms to hours remaining scheduled on the trial date to hours actually sat).

A second indicator of attitudes pertains only to defence counsel. As aforementioned, counsel have two (2) weeks from the date of plea to contact

the Trial Coordinator for a trial date. Failure to do so results in the Trial Coordinator issuing a warrant for the defendant's arrest. Thus, the number of warrants issued indicates the extent to which defence counsel are cooperating with the program.

5) Reduction of Police Overtime

The best way to assess the success of the Trial Coordination Program in reducing police overtime would be to compare the total number of police witnesses required in the Trial Coordination courts who were scheduled to appear while not on duty with the number of police witnesses in the remaining courts who were scheduled to appear while not on duty. The amount of overtime paid to police in the two types of courts could then be compared. However, such a comparison is not possible because neither the Provincial Judges Court nor the Winnipeg Police Department keep records of which officers were scheduled to appear in which courts or whether officers were off duty when called. Further, the Police Department's overtime figures are not broken down into appropriate categories (e.g., how much on a daily/monthly/yearly basis is paid to officers subpoenaed to testify in the Provincial Judges Court at 373 Broadway in the courts controlled by the Trial Coordinator and those which are not).

It is therefore proposed that an estimate of the impact of Trial Coordination on police overtime be obtained by compiling a list of police witnesses subpoenaed for two (2) selected days in all courtrooms.[1] The list would then be divided by type of court (i.e., Trial Coordination and regular) and the Police Department's annual shift calendar would be

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[1]Lists of witnesses in all 373 Broadway courts are available from the Victim/Witness Assistance office.

consulted to determine which officers were on duty on the day in question. An estimate of the cost of overtime for both types of court would then be calculated to provide an indicator of the effectiveness of the Trial Coordination Program in reducing police overtime costs.

2) Qualitative Analysis

Clearly no system operates in isolation from the people who work within it, and the success of the system is at least partially dependent upon their perceptions and reactions. Thus, an evaluation of the Trial Coordination Program must take into account how effective the relevant parties perceive it to be. It is proposed that this information be obtained by interviewing the judges and lawyers involved in the program.

1) Judges

Since the Trial Coordination Program began, a total of eight (8) Provincial Court Judges have presided over the four (4) designated courtrooms.[1] All eight will be surveyed using the attached interview schedule (see Appendix A).

2) Crown Attorneys

Nine (9) Crown Attorneys[2] have worked in the Trial Coordination courtrooms and they will be interviewed using the attached schedule (see Appendix B).

3) Defence Counsel

The perceptions of defence counsel will be obtained by interviewing a sample of ten (10) lawyers selected from the Trial Coordinator's records,

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[1]They are: Judges Mitchell, Rubin, Enns, Norton, Kopstein, Collarman, Minuk and Lizmer.

[2]Messrs. Morrison, Pflug, Cutler, Lawlor, Wyant, Harvey and Slough; and Ms. Kopinsky and Ms. Krahn.

using the attached schedule (see Appendix C).

APPENDIX A

INTERVIEW SCHEDULE: JUDGES

1. When were you appointed to the bench?

2. How long have you been involved with the Trial Coordination Program? (months)

3. In your opinion, who should be responsible for scheduling cases for trial?

   _____ judges
   _____ Crown
   _____ court administrative personnel

4. What are the advantages/disadvantages to trial scheduling by:
   a) judges?
   b) the Crown?
   c) court administrative personnel?

5. Ideally, how many hours per day should your court sit?

6. How many hours per day should be scheduled to achieve this ideal?

7. Do you perceive any problems resulting from the overbooking of cases by the Trial Coordinator in your court?

8. What is a reasonable waiting period for a trial date from the date charges are laid? (months)

9. Do you think judges should have the authority to impose sanctions on defence counsel who book trials but change their plea to 'guilty' on the trial date? If so, what type of sanctions?

10. How would you evaluate the success of the Trial Coordination Program in increasing the efficiency of court scheduling? Why?

11. How could court efficiency be improved without increasing hardship for the participants?

12. Do you think that the designation of an administrative judge in charge of case management would be desirable?

APPENDIX B

INTERVIEW SCHEDULE: CROWN ATTORNEYS

1. How long have you been a Crown Attorney? (years)

2. How long have you been involved in the Trial Coordination Program? (months)

3. In your opinion, who should be responsible for scheduling cases for trial?

   _____ judges
   _____ Crown
   _____ court administrative personnel

4. What are the advantages/disadvantages to trial scheduling by:
   a) judges?
   b) the Crown?
   c) court administrative personnel?

5. How would you describe your caseload in a Trial Coordination courtroom relative to other courts?

   _____ extremely heavy
   _____ heavy
   _____ moderate
   _____ light
   _____ extremely light

6. What was/is the average number of hours per day booked by the Trial Coordinator in your courtroom?

7. What was/is the average number of trials per day booked by the Trial Coordinator in your courtroom?

8. What was/is the average number of hours per day actually sat?

9. What was/is the average number of trials per day which actually proceeded?

10. How many cases per day did you have to remand to another trial date due to overbooking?

11. Do you feel that overbooking of trials increases pressure on the Crown to plea-bargain?

12. Approximately how many hours of preparation time are required per hour of scheduled court time?

13. How many hours of preparation were/are required per day in your Trial Coordination courtroom?

14. What do you think is a reasonable number of hours to be scheduled per court per day?

15. What is a reasonable waiting period for a trial date from the date charges are laid? (months)

16. What are the consequences of delay for:
    a) the Crown?
    b) defence counsel?

17. How far in advance of the trial date are files typically reviewed by you for the first time?

    _____ 1 day
    _____ < 1 week
    _____ 1-2 weeks
    _____ other (specify)

18. How far in advance of the trial date do you typically prepare a case for trial, interview witnesses, etc.?

19. Ideally, how far in advance of trial should files be reviewed and cases prepared?

20. Whose responsibility is it to initiate plea negotiations on a case?

    _____ Crown
    _____ defence counsel

21. Estimate the percentage of your cases in which negotiations regarding guilty pleas and stays are concluded in the following time periods:

    _____ on the day of trial
    _____ on the day before trial
    _____ less than a week before trial
    _____ 1 to 3 weeks before trial
    _____ more than 3 weeks before trial

22. Are these time periods different than those in courts without Trial Coordination; and, if so, how and why?

23. What factors do you believe impede early negotiation (i.e., more than 3 weeks in advance of the trial date)?

24. In your opinion, are the cases being referred to the Trial Coordinator being adequately screened by the Crown Attorneys at the Public Safety building?

25. If not, how could screening be improved to ensure that only cases which are likely to proceed to trial are referred to the Trial Coordinator?

26. Does the physical separation of the courts at the Public Safety Building and 373 Broadway contribute to screening problems?

27. How would you evaluate the success of the Trial Coordination Program in increasing the efficiency of court scheduling? Why?

28. How could court efficiency be improved without increasing hardship for participants?

29. Would scheduling of all cases of a particular type which are unlikely to proceed to trial (e.g., drinking and driving offences) in a single courtroom improve efficiency?

APPENDIX C

INTERVIEW SCHEDULE: DEFENCE COUNSEL

1. How long have you been in practice? (years)

2. What percentage of your practice is in the field of criminal law?

3. In your opinion, who should be responsible for scheduling cases for trial?

   _____ judges
   _____ Crown
   _____ court administrative personnel

4. What are the advantages/disadvantages to trial scheduling by:
   a) judges?
   b) the Crown?
   c) court administrative personnel?

5. What is a reasonable waiting period for a trial date from the date charges are laid? (months)

6. What are the consequences of delay in obtaining a trial date for you? Your client? The Crown?

7. Do you regard the Trial Coordinator as an arm of the Crown?

8. Have you had cases rescheduled by the Crown on the trial date due to overbooking by the Trial Coordinator? If so, how many?

9. Do you feel that overbooking of courtrooms makes the Crown more willing to negotiate a plea-bargain?

10. How far in advance of the trial date do you typically prepare cases scheduled for a day or less of court time?

11. Ideally, how far in advance of the trial date should files be reviewed and cases prepared?

12. Whose responsibility is it to initiate negotiations on a case?

    _____ Crown
    _____ defence counsel

13. When do you think you are in the best bargaining position to negotiate with the Crown: Why?

    _____ on the day of the trial
    _____ less than a week before trial
    _____ other (specify)

14. Estimate the percentage of your cases in which negotiations regarding guilty pleas and stays are concluded in the following time periods:

_____ on the day of trial
_____ on the day before trial
_____ less than a week before trial
_____ 1 to 3 weeks before trial
_____ more than 3 weeks before trial
_____ no negotiation

15. Are these time periods different in Trial Coordination courts and regular courts; and, if so, how and why?

16. What factors do you believe impede early negotiation (i.e., more than 3 weeks in advance of the trial date)?

17. In approximately what percentage of criminal cases do you set trial dates?

18. Approximately what percentage of cases for which you set trial dates actually proceed to trial?

19. What are the advantages of setting trial dates in cases in which you intend to negotiate a plea with the Crown?

20. Who typically appears to set trial dates in your cases?

_____ you
_____ junior or student

21. Would a mandatory meeting between you and the Crown Attorney prosecuting your case one month in advance of the trial date be desirable?

22. Approximately what percentage of your cases which do not proceed to trial (due to 'guilty' pleas or stays) could be resolved at such meetings?

23. How would you evaluate the success of the Trial Coordination Program in increasing the efficiency of court scheduling? Why?

24. How could court efficiency be improved without increasing hardship for the participants?